

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

FILED
U.S. DIST. COURT
BRUNSWICK DIV.

2005 DEC 28 A II: 20

CLERK
U.S. DIST. CT. OF GA.

KENDELL COCHRAN,

Plaintiff,

v.

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

CIVIL ACTION NO. CV205-002


ORDER

After an independent review of the record, the Court concurs with the Magistrate Judge's Report and Recommendation, to which Objections have been filed. In her Objections, Defendant contends that the Administrative Law Judge ("ALJ") did not have to obtain testimony from a physician to review Plaintiff's later-acquired medical records because these records did not establish that Plaintiff met the requirements of Listing 4.04C. Defendant asserts that the ALJ did not include specific language in his decision rejecting the allegation that these later-acquired medical records would have changed the State agency's consultants' opinions that Plaintiff did not meet Listing 4.04C. However, Defendant also asserts, the ALJ's analysis of the entire medical records reveals that he did not find any of the later medical evidence showed that this Listing had been met. Defendant alleges that the ALJ is required to obtain testimony from a medical expert only when additional medical evidence is received that, in the ALJ's opinion, may change a consultant's opinion regarding a claimant's meeting or equaling a Listing.

The Court recognizes that this later-acquired medical evidence may not, in the ALJ's opinion, change the consultants' opinions that Plaintiff did not meet or equal Listing 4.04C. However, without such an express statement by the ALJ, the Court would be left to presume what the ALJ's opinion would be. This is not an appropriate position for the Court when reviewing an ALJ's determination in a Social Security case.

The Report and Recommendation of the Magistrate Judge is adopted as the opinion of the Court. This case is **REMANDED** to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g).

SO ORDERED, this 27th day of Dec, 2005.


JUDGE, UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA